

Burlington Development Review Board

Department of Permitting & Inspections
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AJ LaRosa
Caitlin Halpert
Geoff Hand
Brooks McArthur
Brad Rabinowitz
Leo Sprinzen
Chase Taylor
Sean McKenzie, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD Tuesday, December 20, 2022, 5:00 PM MINUTES

Remote Meeting

Board Members Present: All members were remote. AJ LaRosa, Caitlin Halpert, Geoff Hand, Brooks McArthur, Sean McKenzie, Brad Rabinowitz, Leo Sprinzen, and Chase Taylor

Board Members Absent: None

Staff Members Present: Scott Gustin, Mary O'Neil, and Joseph Cava

I. Agenda II. Communications III. Minutes IV. Consent

- 1. ZP-22-590; 162 Cumberland Road (RL-W, Ward 4N) Kristen McBride / Jon McBride**
Convert existing 14' x 14' tool shed into home office/hobby space to teach and repair saxophone.
(Project Manager, Scott Gustin)

Jon McBride: Sworn in

AJ LaRosa: This agenda item is recommended for consent. Have you read the staff report?

Jon McBride: I have, and I don't have any issues.

AJ LaRosa: Motioned to approve and adopt staff recommendations, Brad Rabinowitz 2nd. Vote 7-0.
Motion carries.

V. Public Hearing

- 1. ZP-22-576; 20 Pine Street (FD6, Ward 3C) Cathedral Immaculate Conception, Parish Charitable Trust / John Caulo**
Request for alternative compliance for the demolition and removal of existing church building, bell tower, parking lot, and impervious pathways. Planned landscape with trees will be retained. (Project Managers, Scott Gustin & Mary O'Neil)

John Caulo, Jim Langan, Reverend Monsignor Peter Routhier: Sworn in.

AJ LaRosa: I would like to propose a revision to the agenda and give this item its own special meeting in January 2023.

Geoff Hand: AJ, I am recused on this.

Brooks McArthur: I think it would make sense to give this item its own special hearing. This is an important issue, and everyone's voice should be heard.

Brad Rabinowitz: It could be possible that this item will require multiple board meetings to address.

AJ LaRosa: One of the considerations is for this item to be heard in person once we're back in person in January.

John Caulo: We are prepared to move forward with this application tonight. The details of this case are straightforward.

Jim Langan: The legality of this issue is not a hang up on this application.

AJ LaRosa: I would disagree, my inclination is to allow the applicant to give a 30-minute presentation, and schedule a special meeting on Wednesday, January 11, 2023.

John Caulo: I am representing the owner of 20 Pine Street. The scope of the project proposes the removal of the existing church building, parking lot, hardscaped sidewalk surfaces, and bell tower. An updated legal memo was uploaded to the application attachments. This is a complicated issue encompassing zoning current use and historical integrity of the property.

AJ LaRosa: This is just for the demolition of the existing church building?

John Caulo: Incorrect, number one on the site plan identifies the church building and sidewalks, number two encompasses the adjoining parking lot, and number three encompasses the bell tower. All these listed features are proposed for demolition and removal. The zoning administrator pointed out the application process implications of removing the trees, so the grove of honey locusts is excluded from the demolition plan as presented.

Brad Rabinowitz: What will be left after the demolition is completed?

John Caulo: The site will be loamed and seeded.

AJ LaRosa: Is there a plan for redevelopment?

John Caulo: No.

Brad Rabinowitz: Why not wait to demolish until the site is ready to be redeveloped?

John Caulo: The redevelopment is outside the scope of this project's proposal.

AJ LaRosa: Hearing no additional questions, we'll turn it over to Jim Langan.

Jim Langan: As John mentioned, we've submitted two legal memos in regard to this project. There is no genuine question applying Section 4413 to the parish's application to demolish this religious site. Section 4413 guarantees the religious exercise of demolishing church buildings without interference from zoning administration staff.

AJ LaRosa: In the first legal memo, what was the referenced case of a church demolition?

Brad Rabinowitz: This property has significance in the City beyond its religious affiliation. Why are you choosing this approach to deconsecrate this building?

Jim Langan: This decision is up to the religious institution by which it is governed.

AJ LaRosa: Even though this property will cease to be a church, Vermont Statute under 4413 V.S.A. still protects the right to demolish this church?

Jim Langan: Correct, the property is permitted as a religious site and right to demolish it is protected by RLUIPA. The zoning ordinance is clear on what constitutes a historical building in Burlington. Part of this threshold is the building reaching an age of 50 years for inclusion on the historical register, which this building has not.

AJ LaRosa: Can you explain the historical review arguments if they were to apply under the age category under Section 5.4.8?

Jim Langan: The first memo specifies the building's age and listing requirements to qualify for the registry of historical places. The building was constructed in 1977 and hasn't reached that 50-year mark.

AJ LaRosa: So beyond religious affiliation, the building wouldn't be listed on the basis of architectural integrity?

Jim Langan: Correct, beyond age, the building doesn't fit the criteria for historical ordinances. The question could be whether the building continues to serve a religious function according to previous cases.

AJ LaRosa: Are there additional questions from the board?

Brad Rabinowitz: I would like to hear feedback from the City Attorney.

Peter Routhier: I am current rector of the Cathedral of St. Joseph and I have been part of the parish of the Cathedral of the Immaculate Conception. The parish does not take this decision lightly, but the removal of the building would help to bring closure to the events of the distant past like the fire that destroyed the original cathedral. The existing building must be removed so healing can occur. I am aware of the emotions and connections made with the current building and now it needs to be demolished for the good of the community.

AJ LaRosa: Thank you, I appreciate your feedback. We would like to get this right.

AJ LaRosa: Motioned to call a special meeting scheduled for 5:00 PM on Wednesday, January 11, 2023 at 645 Pine Street, Brad Rabinowitz 2nd. Vote 6-0. Motion carries.

2. ZAP-22-6; 47 Harrison Avenue (RL-W, Ward 5S) Timothy Ely

Appeal of zoning denial (ZPW-22-148) to replace existing windows with vinyl units. (Project Manager, Mary O'Neil)

Timothy Ely: Sworn in

AJ LaRosa: Mary, can you please give us your feedback on the denial of this application?

Mary O'Neil: The building official issued a stop work order on the basis that no permits were pulled for this project. Two permits were subsequently pulled for the vinyl siding and windows. We do have a record that the vinyl siding was approved on the opposite side of the duplex and has been there for over fifteen years. We don't recognize the vinyl windows as an appropriate finish on a structure listed within a national register district.

AJ LaRosa: Correct me, but after a period of fifteen years the existing materials can remain as installed?

Mary O'Neil: Yes, the windows on the opposite side of the duplex have been in place since the 1980s and were unpermitted. However, any replacements would need to adhere to the existing ordinance.

AJ LaRosa: Any additional questions?

Brad Rabinowitz: Just a comment, the other half of the building has vinyl siding and vinyl windows and would create a mismatch if vinyl wasn't approved.

Caitlin Halpert: In 1987 there was an ordinance addressing replacement of windows for historic buildings and districts.

Mary O'Neil: I make no determination on the length of time the replacements have been in place,

Brad Rabinowitz: Are clad windows acceptable?

Mary O'Neil: Vinyl is an inappropriate substitute. Wood, wood clad, and fiberglass are the acceptable replacement materials.

Geoff Hand: Was vinyl ever approved on historic structures?

Mary O'Neil: Only on newer additions, not the historic structure itself.

AJ LaRosa: Are historic windows specifically addressed in the zoning ordinance?

Mary O'Neil: This window document was specifically addressed and adopted by the Design Advisory Board. This document articulates the modern replacement materials which are acceptable.

Sean McKenzie: Vinyl windows are meant to be installed on a flat surface and doesn't address the sills and window surrounds that are characteristic of historic buildings.

Mary O'Neil: Some clad windows still utilize vinyl and this is the caveat of acceptable replacement materials. At this stage of the project, the historic window features have been removed. The siding permit substitutes fiber cement board, which has been upheld by the courts.

Leo Sprinzen: It sounds like the variation of the proposed window pattern changes the existing window pattern.

Mary O'Neil: The four-over-two pattern proposed replicates the historic window pattern that these structures originally had.

Timothy Ely: My son does contracting for a living. It was determined that the scope of the project was not feasible to fix the existing rot. The existing windows were screwed to the wall to hold them in place.

AJ LaRosa: Did you look into the cost of what it would be to replace the vinyl windows with period appropriate windows?

Timothy Ely: I did, and it would be hard to financially replicate the windows. I plan on retiring in a couple of years, and it is not financially feasible.

Brad Rabinowitz: Is this clear glass or does it have muntins separating the pattern?

Timothy Ely: It is clear glass, and my neighbor has the same exact windows installed in their half of the duplex.

AJ LaRosa: Are there any members of the public here to speak on this item? Seeing none, I move we close the public testimony on this item.

3. ZAP-22-8; 89 Chestnut Terrace (RL, Ward 6S) Janine Boix-Vives / Arline Duffy

Appeal of zoning determination (ZP-22-503) recognizing 89 Chestnut Terrace as a separate lot from 41 South Street. (Project Manager, Scott Gustin)

Janine Boix-Vives, Arline Duffy, Zachary Berger, Kim Sturtevant: Sworn in.

Brooks McArthur: A reminder to people in the waiting room that 20 Pine Street has been scheduled to 5:00 PM on Wednesday, January 11, 2023. I am recused on this matter.

AJ LaRosa: Can people who wish to speak on this item raise their right hand? This is an appeal of a zoning determination, and I have a question for staff. This determination seems to go outside the scope of our authority including work with deeds which is outside of zoning.

Scott Gustin: The determination request to recognize a separate lot does include some land records to address this matter. The zoning implications are whether there is a separate building lot or not. The owner of 41 South Street abuts the property located at 89 Chestnut Terrace. I issued an adverse determination initially due to the survey associated with two boundary line adjustments. In preparation for the appeal of that initial decision, further research was done. This area was originally subdivided as two lots, The Sanborn maps depict two lots, and the deed language refers to multiple lots. The boundary line adjustment survey creates ambiguity. Ambiguity is usually found in favor of the property owner. Beyond the survey, all the other data points to this being two separate lots.

Kim Sturtevant: From a zoning perspective, the jurisdiction and context of deeds and surveys is within the scope of your review of this appeal.

Geoff Hand: Can you elaborate on the reversal of the adverse determination with an affirmative determination?

Kim Sturtevant: When new evidence comes to light, then reconsideration is allowable if the evidence changes the outcome.

AJ LaRosa: Who do we have on behalf of the appellant?

Arline Duffy: I would like to follow up on the jurisdiction of this appeal. Once the appeal is filed there is constitutional due process to hear it out and participate in the proceedings. Scott and Mary were aware that I wanted to participate as an adjoining land owner. The zoning application permitted the boundary line adjustment unless 89 Chestnut Terrace is encompassed by the parcel of 41 South Street. There is no individual E911 address for 89 Chestnut Terrace, and the permit from 2002 does not show any ambiguities in the survey.

Geoff Hand: The survey prepared suggests that this is one lot.

Caitlin Halpert: Are there any additional questions for Arline? We should hear from Zachary Berger from Gravel & Shea.

Zachary Berger: I would like to address the legal authority of 89 Chestnut Terrace being its own separate lot. The procedural issues asserted by the appellant are moot as we are here at an appeal hearing. The insurance company recognizes this as a separate lot from 41 South Street. This is

supported by land records and assessor's office with no intention of merging the two lot lines. There has been no municipal action to merge these two lots. The ambiguity caused by the mistake made on the survey should not impact the appellant and the determination should be upheld.

Geoff Hand: The survey, though not containing a dividing line, does change the back corner pins which would impact the surrounding lots. This creates a difference in the ambiguity between the survey and the documents contained within land records.

Zachary Berger: The ambiguity should not require a subdivision to remediate the error on the survey. Both of these lots, 89 Chestnut Terrace and 41 South Street, are conforming lots according to the assessment and insurance of these parcels.

AJ LaRosa: Are there members of the audience who wish to speak on this?

Arline Duffy: I'd like to point out that the boundary line adjustment was not called into question by the zoning office. There is a non-conforming lot between 89 Chestnut Terrace and 41 South Street that divides the two lots. It doesn't seem equitable to neighbors to change the position because they want to. My title relies on this being recognized as one lot, not two.

Brad Rabinowitz: What do you mean about this one lot?

Arline Duffy: My lot is based upon 41 Chestnut Terrace, not 89 Chestnut Terrace.

Zachary Berger: There has been no action to merge these lots, and it would be improper to base this upon a survey that clearly doesn't articulate a merger.

Geoff Hand: Does the owner receive two separate tax bills?

Zachary Berger: Yes, my client receives two separate tax bills for two separate lots. My client has paid these bills based upon the assessment without question.

AJ LaRosa: Hearing no additional questions, we will close the public hearing on this item.

VI. Sketch Plan

1. ZSP-22-12; 284 Grove Street (RL, Ward 1E) Ireland Grove Street Properties, LLC / Nicholas Smith

Sketch Plan Review for the demolition of 12 single-family modular homes and one 3-unit apartment building and construct 13 new duplex buildings (total 26 units) along existing looped driveway.

(Project Manager, Scott Gustin)

Nicholas Smith: Sworn in.

AJ LaRosa: This proposal is to demolish the existing modular buildings and historically registered building to construct duplexes in their place.

Brad Rabinowitz: I am recused on this.

Nicholas Smith: This is south to Bayberry, and would be 13 duplexes, with a total of 26 units. The layout of Grove Street is conforming to the setup of the Bayberry development. We would like to make use of the existing stormwater and sewer system with upgrades to support the new development.

AJ LaRosa: This is sketch plan, so this is feedback only. Can you discuss the existing historically registered brick building?

Nicholas Smith: The existing brick building was reviewed in 1998, and has been altered too much to qualify for the State Register of Historical Places anymore. The Design Advisory Board has not thoroughly reviewed the report supporting its lack of architectural integrity.

AJ LaRosa: We've reviewed a lot of demolition by neglect cases, and this will definitely come up in our review.

Geoff Hand: How long have you owned the property?

Nicholas Smith: The parcel was acquired by SD Ireland in the early-2000s. Since that time, SD Ireland has made steps to shore up the building.

AJ LaRosa: This is a good project for the housing density that is needed. Are there any additional questions from the board?

Nicholas Smith: I'd like to add that the grades created by the existing building combined with the condition of the existing modular units create the conditions needed to demolish and rebuild which would vastly improve the site.

AJ LaRosa: I move we close this sketch plan review.

VII. Other Business

1. Joint Institutional Parking Management Plan

Time extension request. (Project Manager, Scott Gustin)

AJ LaRosa: This seems relatively straight forward.

Sandy Thibault: We have a request for an extension on the joint institutional parking management plan that was approved in December 2021. We are requesting a six month extension to address factors created by a COVID-19 and post-COVID-19 environment.

Caitlin Halpert: I have a question about the approval time frame being up to five years.

AJ LaRosa: This doesn't impact the requested six month extensions. Are there any additional questions or comments from the board? Hearing none, would someone like to make a motion?

AJ LaRosa: Motioned to approve the time extension request, Geoff Hand 2nd. Vote 7-0. Motion carries.

VIII. Adjournment

Hearing closed at 7:05 PM.

Plans may be viewed upon request by contacting the Department of Permitting & Inspections between the hours of 8:00 a.m. and 4:30 p.m. Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Zoning office is considered public and cannot be kept confidential. This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/dpi/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.

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